IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

WP(C).No. 34397 of 2004(T)

OS.180/2004 of PRL.M.C., KOCHI
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PETITIONER:

ANU, AGED 26 YEARS, S/O.KATTIPARAMBIL
JOSEY, R/A. C.C.17/1622, MOOLAMKUZHI MURI,
RAMESWARAM VILLAGE, NEAR KAZHUTHUMUTTU JUNCTION,
KOCHI.

BY ADV. SRI.R.D.SHENOY
SRI.S.VINOD BHAT

RESPONDENTS:
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1. XAVIER, AGED 58 YEARS, S/O.LATE
JOSEPH, R/A. KATTIPPARAMBIL HOUSE,
C.C.17/1623, RAMESWARAM VILLAGE, KOCHI TALUK.

2. MATHEW, AGED 65 YEARS, S/O.LATE JOSEPH,
R/A. KATTIPPARAMBIL HOUSE, CC.17/1623,
RAMESWARAM VILLAGE, KOCHI TALUK, REP. BY BROTHER
AND PRESENT GUARDIAN XAVIER, R/A. CC.17/1623,
RAMESWARAM VILLAGE, KOCHI.

BY ADV. SRI.S.B.PREMACHANDRA PRABHU
SRI.G.SREENIVASA PRABHU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF ORDER DATED 19.7.2004 IN O.S.180/2004 ON THE FILE OF PRINCIPAL MUNSIFF COURT, KOCHI.

EXT.P2: COPY OF JUDGMENT DATED 20.7.2004 IN O.S.180/2004 ON THE FILE OF PRINCIPAL MUNSIFF'S COURT, KOCHI.

TRUE COPY

P.A.TO JUDGE

PIUS C. KURIAKOSE,J.

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W.P.(C) No.34397 of 2004

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Dated: 22nd June, 2007

JUDGMENT

It was reported by the counsel appearing for the petitioner that he has relinquished the engagement of the petitioner and that the petitioner has been advised accordingly and that the case bundle was returned to him. Today the case is listed showing the name of the petitioner in the cause list. The petitioner is absent.

2. Heard Mr.S.B.Premachandra Prabhu, counsel for the respondents. The order impugned in this Writ Petition is Ext.P1 by which the written statement filed by the petitioner was rejected on the reason that the same was not filed within 90 days of receiving the same. Mr.Premachandra Prabhu submits that the order is justified since there was no application even for receiving the written statement. Whatever that be, ordinarily I would have allowed the Writ Petition and directed the learned Munsiff to receive the written statement in view of the judgment of the Supreme Court in **Kailash v. Nanhku** (2005(2) KLT 623). But then Mr.Premachandra Prabhu invites my attention to the subsequent development in the case. He submitted that Josey, the petitioner's father has filed subsequently a suit O.S.No.490/04 seeking fixation of boundaries to the properties in

question including 29 cents of property covered by the two documents assailed in the present suit and O.S.No.179/04. The copy of the plaint in that suit was placed before me and the same shows that it has been conceded by Josey, the petitioner's father that 29 cents which is the subject matter of the present suit is allotted to the share of the 2nd defendant under the Will. Mr.Premachandra Prabhu submitted that O.S.No.179/04 which was a similar suit filed in respect of another document seeking similar reliefs was also decreed by the court under the same circumstances and that decree has attained finality. These submissions of the learned counsel are not disputed before me by anybody. Under these circumstances, I do not find any warrant for interfering with the impugned order Ext.P1 in the supervisory jurisdiction of this court under Article 227 of the Constitution. Accordingly, the Writ Petition will stand dismissed. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**